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ABSTRACT

The Age Discrimination Act of 1975 is summarized, and issues concerning the adult woman and older students on campus are discussed. The act will be helpful in eliminating some of the inequities older women (and men) may face in educational institutions. The act does not define "age" to limit coverage; it simply prohibits discrimination on the basis of age. The primary benefits of the act for women in education are likely to be in areas such as admissions, financial aid, counseling, and health care. In addition to having motivation and high grades, older students make a valuable contribution to the classroom by adding to its diversity. Because some graduate and professional schools have not experienced a shortage of students, discrimination on the basis of age is likely to be more pronounced. Financial aid is usually limited to at least half-time students, and many adults, including homemakers and working women, who participate in education on a part-time basis do not qualify for aid. Some scholarships also are restricted to persons under specific ages, and the arbitrary definitions of "dependent" and "independent" status used in determining eligibility for financial aid frequently hurt married women, especially those with children. In many cases, counseling, related services, and health facilities do not address the needs of older women. Physical education requirements, continuing education programs, and recruitment and outreach are discussed. Consistency of the act with other federal legislation is addressed. An insert summarizing the act is included. (SW)

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The Age Discrimination Act of 1975 And Women on Campus

INTRODUCTION

Age discrimination affects all people, but older women receive a "double dose" of discrimination—once because of their age and once again because of their sex. If the older woman is a member of a minority group or also handicapped, the problem is intensified.¹

In education—as in work—women are particularly vulnerable to age discrimination. Many do not follow traditional sequences of study and work. Women often take time out for childbearing and homemaking, a fact which means that many women are often older when they begin or return to study. The phenomenon of "re-entry" is increasingly common to women. Of all students 35 or older in 1976, for example, 59% were women—up from 52% the year before. In 1977, women students accounted for 93 percent of the enrollment growth at colleges and universities in the U.S. Many of these were older women.

The woman who is 25, or 35, or 45 or more, is no longer a rarity on campus. Although fewer women today are interrupting their studies, or are doing so for shorter periods of time, the impact of the traditional patterns of delayed or interrupted training for women will continue for some time to come. Although the diminishing pool of traditional students—those from 18-22—has led many undergraduate programs to try to attract and accommodate the mature student, older women often face special problems when they decide to return to college.

THE ACT

The Age Discrimination Act of 1975—which goes into effect January 1, 1979—will be helpful in eliminating some of the inequities older women (and men) may face in educational institutions. The Act prohibits:

unreasonable discrimination on the basis of age in programs or activities receiving Federal financial assistance, including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972.

*This paper is substantially based upon testimony presented to the U.S. Commission on Civil Rights by Dr. Bernice Sandler, Executive Director of the Project on the Status and Education of Women, September 26, 1977, and by the National Advisory Council on Women's Educational Programs, September 23, 1977.

¹Black women, for example, earn less money than white women, but women earn less than men regardless of race. In effect, it takes four years of college to pull a woman's earning power up to that of a man with a high school education.

A summary of the Act is included.

The Act is unique in that it does not define "age" to limit coverage to any particular group, such as those 65 or older; it simply prohibits discrimination on the basis of age *at any age*, as long as that discrimination is "unreasonable."² Thus the Act has significance for persons at all ages and is particularly important for women in education. Employment is not covered by the Act, other than employment funded by the Comprehensive Employment Training Act (CETA). The primary benefits of the Act for women in education are likely to be in areas such as admissions, financial aid, counseling, and health care.

AGE AND EDUCATION

Older women are often better motivated students. Many professors remember the returning veterans of World War II as among their best students. Similarly, older women returning to school get higher grades than their younger peers and often surpass their own previous school performance. They are in school to learn and they work hard. Whether all older people perform as well academically as all younger people is difficult to answer because the answer to the question depends on *which older person* and *which younger person* we are talking about. Certainly the spread of intelligence and potential academic achievement is wider *within* any age group than the difference *between* any two age groups. Another way of putting it is that the individual differences are far more important than any group differences. Admission on the basis of *individual* abilities is likely to be far more effective than by uniformly applying characteristics of a group to specific individuals.

But apart from motivation and higher grades, older students also make a valuable contribution to the classroom by adding to its diversity. Young women and young men often have little opportunity to meet and work with adults other than their parents or their teachers. To have older persons as co-students helps younger persons learn about the adult world. Such students are often role models for their younger peers, and it is not uncommon to see friendships develop which cross the age barriers.

²The meaning of the term "unreasonable" is not clear from the Act's legislative history. In addition to allowing statutory programs with age as an eligibility criteria, such as Social Security, to be considered reasonable, the Act may also allow policies or practices to be defined as "reasonable" only when there is no other alternative to the age discriminatory practice to accomplish its objective. For example, a policy prohibiting students over a certain age from intramural sports could be changed to tie eligibility to physical fitness; to use age *per se* in this instance might be considered "unreasonable."

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In education, age discrimination is not experienced solely by "senior citizens"; depending on the program or activity, the classification "too old" may occur as early as the twenties. There is, for example, a marked falloff in admissions to medical school after age 28, and some programs like the Rhodes Scholarships will not consider applicants over 24. Policies and practices which seem reasonable for students between the ages of 18-22 may deliberately or inadvertently discriminate against older women (and men). Thus requiring half-time student status in determining eligibility for financial aid may deprive the many homemakers and single parents who cannot attend school on a half-time basis of much needed financial aid. While this policy is ostensibly fair to both men and women, there is an overwhelming likelihood that more women than men will be affected because in most instances, the single parent will be a woman—especially if the family is poor.

NEED FOR SELF-ASSESSMENT

Those concerned with the possible impact of the Age Discrimination Act on education must focus on both program and procedure. Age discrimination cannot be eliminated until it is first identified. Too often, age discrimination—especially when its victims are women—is invisible to everyone but the victim.

Much of the discrimination older women and men face in education institutions is not intentional. Personnel are often unaware that a particular policy is unfair or has a disproportionate impact. When the new law goes into effect, there will be a period, as with any new law, when administrators will stumble over the law inadvertently. The process of educating personnel to the law and its regulation could be speeded up if a self-assessment study is required or if institutions voluntarily evaluate their own programs and policies. For example, the Title IX regulation³ which required such a self-evaluation, gave institutions the opportunity to identify, evaluate and change, where necessary, overtly discriminatory policies as well as those with disproportionate impact. The federal government will not ever have the resources to monitor every institution; a self-assessment insures that every institution can become aware of the law and self-enforce its provisions.⁴

Data collection can be a powerful tool in institutional self-evaluation. Although data are collected by sex and race for many admissions and other programs, there is little on age and none explicitly tabulated by sex/age or by sex/race/age. Data tabulated in such a fashion for applicants and admittees to a specific program would reveal whether or not older women are indeed experiencing discrimination.

This paper lists areas where overt as well as indirect discrimination may occur. Women's groups are likely to press for coverage of all of these areas by the implementing regulation currently being developed by the Department of Health, Education and Welfare.

ADMISSIONS

Women, even as young as 25 or 30, are sometimes considered "too old" to enroll in postsecondary programs. While this attitude is changing, women who are older than the traditional age of students are somehow seen as deviants. The shortage of 18-22-year olds has, however, created a "buyer's market" for undergraduate students and it has become increasingly easier for "older" women to enter undergraduate programs in many, but not all, institutions.

In contrast, because of their highly competitive nature,

some graduate and professional schools have not experienced a shortage of students and there discrimination on the basis of age is likely to be more pronounced.

There seems to be no consistent rationale in the way different institutions (or different departments within the same institution) determine what age is "too old" for admittance. In one school it may be 30, in another 40, in another 45. Others have no set age cut-off but take age into account, nevertheless.⁵ Women who have delayed or interrupted their graduate education in order to build their family sometimes find it difficult to gain admittance to such programs.⁶ This is also an area in which sex discrimination is clearly compounded by age discrimination.

In many graduate programs, course work done five or ten years earlier is considered invalid. In some disciplines—law and medicine, for example—the time frames are even shorter so that two to three year old credits may have "expired."

Many attitudinal factors also work against admission of older women to education programs at all levels. Faculty may feel uncomfortable relating to students their own age or older. Often, older women are viewed as lacking potential or as having no relevant experience, especially if they have been away from school to raise children. At one institution a few years ago, a special program for attracting retired military personnel was initiated at a time when women in the same age bracket were told they were "too old" to return to school. Additionally, the irregular work and/or school history of women with childrearing and family responsibilities is often viewed negatively, as though it had the same connotation of instability which a similar history might imply for a male or someone without the demands of homemaking.

FINANCIAL AID

Increasingly, receipt of financial aid is key to entry and continuation in post-secondary education at all levels. While women have tended to be the disproportionate users of non-loan federal financial assistance, working and adult women indicate that they rarely use federal aid. Several problems seem to exclude older women from full participation, all of which might be addressed through the Act's regulations.

FEDERAL PROGRAMS

Financial aid is usually limited to at least half-time students. However, two-thirds of adults participating in education attend class for four or fewer hours a week—not enough to qualify for aid. Similarly, employed adults are much more likely to attend school than unemployed adults and are likely to

⁵ If "cost-benefit" is a factor in denying admission to older students, there seems to be little consistency or articulated criteria as to how particular age cutoffs are determined.

⁶ At 28 or older, a 1976 applicant had a 1:4.5 chance of acceptance at a medical school—at 27 or younger, the ratio was 1:2.5. In a 1971-72 survey, 22% of applicants aged 28-37 were accepted to medical school, but less than 12% of those 38 and over were accepted. In a 1977 study done by the U.S. Civil Rights Commission, of 114 medical schools surveyed, 28 used age as an explicit entrance criterion. One school stated flatly that no applicants over 35 would be considered for admission. These figures apparently reflect the belief that graduate education is an "investment" which yields fewer returns to the discipline and society as the student grows older. However, the longer life span of women in general, as well as individual differences in life span and in career perseverance, may affect the number of years a person devotes to her or his profession as much as their age at the time of admission. For example, older women are less likely to change careers begun later in life; it is quite possible that the "second career" phenomenon is more likely to occur in males who made very early career choices.

³ Title IX of the Education Amendments of 1972 prohibits sex discrimination in federally assisted education programs.

⁴ The Federal government also needs to assess its own programs and policies to ensure that none overtly or inadvertently violate the Act.

SUMMARY OF AGE DISCRIMINATION ACT OF 1975 AS CONTAINED IN TITLE III OF THE OLDER AMERICANS AMENDMENTS OF 1975 (PUBLIC LAW 94-135, NOVEMBER 28, 1975)¹

1. Effective date	HEW's regulation cannot be effective <i>before</i> January 1, 1979. (The U.S. Commission on Civil Rights was to have compiled a report on age discrimination by May, 1977. ² HEW must publish a <i>proposed</i> regulation no later than one year after the report or 2½ years after enactment, ³ (whichever occurs first.) The <i>final</i> regulation must be published no later than 90 days thereafter.
2. Which Institutions are covered?	All institutions receiving federal financial assistance including funds from the State and Local Fiscal Assistance Act of 1972 [Revenue Sharing Act, (31 U.S.C. 1221 et seq.)].
3. What is prohibited?	Unreasonable discrimination on the basis of age in programs and activities receiving federal financial assistance. ⁴
4. Exemptions from coverage	a) It is not a violation for a program or activity to "reasonably" take into account "age as a factor necessary to the normal operation" or "achievement of any statutory objective." b) It is not a violation for programs or activities to take into account reasonable factors other than age.⁵ c) The provisions of this title do not apply to any program or activity where age is the statutory criterion for benefits and assistance.⁶ d) Employment practices and labor-management joint apprenticeship training programs are exempted [other than public service employment programs or activities receiving funds under the Comprehensive Employment and Training Act of 1974 (29 U.S.C. 801, et seq.)].
5. Who enforces the Act?	Federal departments or agencies which extend financial assistance. HEW will enforce the Act with regard to educational institutions.
6. How is a complaint made?	Procedure not yet determined. A letter will probably be acceptable.
7. Can complaints of a pattern of discrimination be made?	Not yet determined.
8. Who can make a complaint?	Individuals may make complaints. (However, it is not yet clear whether organizations may do so on their own behalf and/or on behalf of others.)
9. Time limit for filing complaints	Not yet determined.
10. Can investigations be made without complaints?	Not yet determined.
11. Can the entire institution be reviewed?	Not yet determined.
12. Record keeping requirements	Not yet determined.
13. Enforcement power and sanctions	If voluntary compliance fails, the head of the federal department or agency granting funds may terminate, or refuse to grant or to continue assistance. Termination or refusal must be limited to the particular program or activity receiving financial assistance. The statute explicitly states that termination of federal funds or refusal to grant such assistance is the exclusive remedy for enforcement of this title. (This may imply that there is no private right of individuals to sue fund recipients directly.)
14. Can back pay be awarded?	The Act does not cover employment except under Comprehensive Employment and Training Act of 1974. It has not yet been determined whether the remedy of back pay will be applicable to such employment.
15. Affirmative action requirements	There are no restrictions against actions which are non-preferential.
16. Coverage of labor organizations	Does not apply.
17. Is harassment prohibited?	Not yet determined, but likely to be prohibited.
18. Notification of complaints	Not yet determined.
19. Confidentiality	Not yet determined.
20. Further information and relevant documents	The U.S. Commission on Civil Rights report on age discrimination in federally funded programs.

¹The regulation for Title III has not yet been published. The analysis which follows includes information which is explicitly stated in the statute, as well as how the law is likely to be interpreted in light of other precedents and developments.

²The Report of the Commission on Civil Rights was published in December 1977.

³May 1978.

⁴Nothing in Title III may conflict with the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634) as amended.

⁵Such as health or strength.

⁶Such as Social Security.

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be paying for it by themselves (54.6%), or through employers (25.9%). Many of these students attend part-time. Among many working women, salaries tend to be so far below those of males that little discretionary income is available for education. Extending aid to students with less than half-time enrollments would have the dual advantage of enticing non-participants while encouraging increased participation among others. Women are simply less likely than men to be able to find non-governmental sources of aid. The half-time requirement is a substantial barrier for homemakers and working women who frequently cannot become half-time or full-time students due to other responsibilities.

SCHOLARSHIPS

Some scholarships are restricted to persons under specific ages. At the graduate level, for example, there are many prestigious scholarships which are limited to persons under 35.⁷ Thus women who have returned to school after raising a family are frequently too old to be eligible for many of these awards. Additionally, many doctoral and postdoctoral fellowships aimed at the "beginning professional" inadvertently discriminate against older women whose professional achievements may have been postponed or interrupted because of family responsibilities. It is not at all uncommon for women to be ten or more years behind male counterparts in professional achievement.

DEPENDENT v. INDEPENDENT STATUS

The arbitrary definitions of "dependent" and "independent" status used in determining eligibility for financial aid frequently hurt married women, especially those with children. The so-called independent students—including married students—must contribute higher portions of their family's discretionary income to education than those classified as "dependent" students. Therefore, for example, a woman who is entirely dependent upon her husband for financial support may be ineligible for student financial aid because she is classified as an "independent" student while her "dependent" children will qualify for assistance under the same program.

COUNSELING, CAREER PLANNING & PLACEMENT

In many cases, these services are geared to younger, traditional students. Personnel may not be trained to deal with the problems of older students, many of whom may be facing major life crises associated with becoming independent after years of family centered life. (Of particular interest here are the special programs aimed at returning women students. These programs could well serve as models for across-the-board counseling of older students, regardless of gender.)

Although the Age Discrimination Act specifically exempts employment (except under CETA) from coverage, it does not address placement services directly. Placement programs, however, may be covered by the regulations because they are a service provided to students. Placement personnel need to be aware of their obligation not to aid employers in discriminating on the basis of age.

HEALTH FACILITIES AND INSURANCE

While more campuses with health facilities and group insurance plans for students are paying attention to female health problems, many schools still lack gynecological services, and some problems may not be covered by health services. Title IX of the 1972 Education Amendments is having an impact in this area, but personnel in student health services may not be used to dealing with problems affecting older students. Insurance

plans may also omit coverage of problems likely to occur among older women.

PHYSICAL EDUCATION

At the undergraduate level, older students may have difficulties in some instances completing physical education requirements. Sometimes, they have been exempted from these requirements. However, it is conceivable that an older student thus exempted might still want to take such a course, and might claim that such discrimination under the Act is "unreasonable." The problem is complex enough to warrant development of standards in physical education based on ability rather than on age *per se*.

RECRUITMENT AND OUTREACH

Recruiting for students is traditionally done in high schools for undergraduate applicants, and in undergraduate schools for graduate applicants. Materials used in recruitment rarely show older persons as students. While not deliberately discriminatory, these practices nevertheless may reduce the number of non-traditional applicants. Recruiting practices and tools need to be age-fair at least, and might involve outreach to settings where non-traditional applicants are concentrated.

SPECIAL PROGRAMS FOR OLDER PERSONS

Some schools and states have developed special programs for older persons, such as free or reduced tuition. Hopefully, such programs would be able to continue; the Act was not intended to abolish programs benefiting the elderly. It is likely that the regulations would define such programs as examples of "reasonable" discrimination.

CONTINUING EDUCATION PROGRAMS

In some schools, special undergraduate programs of continuing education have been developed for non-traditional students, often meaning those over 25 years. Many of these programs began in response to the increasing number of women returning to school and are excellent. These programs cannot be limited by sex any longer; as a result of Title IX, both men and women may attend. In some schools, students have a choice as to whether to enter as a continuing education student or as a regular student; in others, age is a determining factor. Because there are often differences in the requirements and the kinds of courses offered, restrictions such as these, based on age, might end up being violations of the Act. Women's groups are likely to suggest that the differing kinds of programs be optional and based on student needs rather than age.

COORDINATION AMONG AGENCIES

Although HEW is expected to have an integral and lead role in the enforcement of the Age Discrimination Act, it is also important that there be some coordinating mechanism to insure that the various agencies issue regulations consistent with those of HEW [as required by Section 304(a)(4)] and to insure that enforcement throughout the government is also consistent. Title VI of the Civil Rights Act,⁸ as coordinated by the Justice Department, might be a useful model to explore for the Age Discrimination Act: currently there is no coordinating mechanism for Title IX. Additionally, it might be helpful to incorporate age discrimination into civil rights compliance reviews.

CONSISTENCY WITH TITLE VI AND TITLE IX

The Age Discrimination Act is patterned after Title VI of the Civil Rights Act of 1964 and Title IX of the Education

⁷Schools also often participate in the selection process for age-restricted scholarships sponsored by outside organizations.

⁸Title VI prohibits discrimination based on race, color and national origin in federally assisted programs.

Amendments of 1972. It will be most helpful to institutions and to beneficiaries insofar as it is possible for the regulation of the Age Discrimination Act to be patterned after Titles VI and IX. Some of the areas to be decided by the regulation which might well be consistent with Titles VI and IX are the following:

- Complaint procedure
- Complainant definition (whether or not organizations can make complaints on their own behalf and/or on behalf of others)
- Time limit for filing complaints
- Whether investigations may be made without complaints
- Whether the entire institution is reviewed or just the program receiving federal funds
- Record keeping requirements
- Prohibition of harassment
- Notification of complaints to institutions
- Confidentiality of complainants

CONCLUSION

As age increases, the problems women confront are compounded until they become almost insurmountable for women in their 60's. Agism is unique in this regard, and presents special difficulties of language and definition. These difficulties will undoubtedly spill over into enforcement and implementation problems, since the weight of myth about age grows increasingly heavy and difficult to unseat as older and older population groups are considered. What must be central to any understanding of age-based discrimination is that the myths of aging tend to circumscribe opportunities by stereotyping abilities and needs—and that "too old" is a judgement that should

be, but rarely is, made on an individual basis, as determined by highly specific circumstances. Few admissions officers at graduate or professional institutions would deny that they are reluctant to enroll students past 50—and most will also say that this is a general bias which takes "exceptions" into account. Yet, the fact that people over 50 are welcome only if they are exceptional is proof only that stereotypes exist—not that judgements based on the age of applicants are grounded in fact. As the National Council on the Aging has pointed out in its booklet, "Facts and Myths About Aging": "In certain societies, where it is not uncommon to find people *living- and working-past the age of 100*, a person of 65 is considered to be middle-age."

Ultimately, even though women today with college educations can expect lower salaries and more limited opportunities than their brothers with high school educations, it is education that affords women the opportunity to achieve self-sufficiency. For women beyond the traditional age for students, education may be the *only* route to that self-sufficiency. For too long, the often unconscious prejudice which bars older women from so much of the educational system has continued unabated. The legislation will not change attitudes directly, but will ensure that all Americans, regardless of barriers born of myth and prejudice, have the same opportunity to exercise their rights to use their talents, and to contribute to the public good. This law affords us the chance to begin to change that by opening up education and training programs. It is a law which affects all of us, for we are each of us, after all, growing older daily.

In summary, the Age Discrimination Act is likely to be welcomed by women in education. Title IX which prohibits discrimination on the basis of sex opened the educational doors to women; the Age Discrimination Act will help insure that they will not be kept out on the pretext of age.

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